

**REQUEST FOR COMMENTS
ON
PROPOSED REISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS**

On August 9, 2001, the U.S. Army Corps of Engineers published its "Proposal to Reissue and Modify Nationwide Permits; Notice" in Part IV of the *Federal Register* Volume 66 Number 154. Appendix A of this public notice is an index of the nationwide permits, general conditions, and definitions contained in the notice. Copies of the complete notice is available on the Wyoming Regulatory Office web site at <http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.html>. Paper copies of the notice are also available at the Wyoming Regulatory Office.

Nationwide permits are general permits issued on a nationwide basis to authorize specific activities with minor environmental effects through simplified review and approval procedures. Some activities require pre-construction notification to the District Engineer or his designee before commencing with any regulated activities. This notification requirement is necessary under certain conditions to ensure that activities authorized by nationwide permits have minimal adverse impacts on the aquatic environment both individually and cumulatively.

This public notice provides an opportunity for the public to comment on the proposal to reissue and modify the nationwide permits. Comments on national issues should be sent to the GAO Building, Office of the Chief of Engineers, Regulatory Branch (ATTN: CECW-OR), 441 G Street, N.W., Washington, D.C. 20314-1000. The U.S. Army Corps of Engineers Headquarters Office will conduct a public hearing in Washington, D.C., on September 12, 2001, at the GAO Building, 7th floor auditorium. The intent of this hearing is to solicit public comments; both oral and written, on the Nationwide Permit Program as a whole or on individually proposed nationwide permits on a national level. The public record for this hearing will conclude at close of business September 22, 2001. This date is separate from the *Federal Register* notice closing date for the receipt of written comments. For further information on the hearing, please contact Mr. Rich White at (202) 761-4599, or Mr. Sam Collinson, at (202) 761-4594.

In addition to general conditions imposed at the national level, Division Engineers are authorized to add regional conditions applicable in certain geographic areas, typically States or watersheds with unique aquatic environments where activities authorized by nationwide permits could cause more than minimal adverse effects. Regional conditions are an important mechanism to ensure that adverse effects to the aquatic environment due to authorized activities are truly minimal, both individually and cumulatively. Division Engineers may also suspend or revoke some or all nationwide permits in specific regions.

Appendix B of this public notice contains a complete description of all regional conditions currently in effect within the State of Wyoming. The Wyoming Regulatory Office is now seeking comments on existing regional conditions and recommendations on any additional regional conditions. In response to comments received, another public notice announcing all proposed regional conditions will be published. Regional conditions approved by the Division Engineer will become effective when the final nationwide permits are published in the Federal Register.

Water quality certification or waiver under Section 401 of the Clean Water Act is required for all nationwide permit authorizations. The Wyoming Department of Environmental Quality, Water Quality Division, 122 West 25th Street, Cheyenne, Wyoming, 82002, is the agency responsible for certifications in all areas outside of the Wind River Indian Reservation. The U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202, is responsible for certifications on Tribal lands. The Wyoming Regulatory office has initiated requests for water quality certifications from those agencies. Regional conditions imposed on water quality certifications will also be published at a later date.

Provisional determinations, including environmental documents, will be prepared for all nationwide permits in accordance with general permit authority contained at 33 CFR Part 330.4(e). The decision documents will be supplemented by Division Engineers to address decisions concerning regional conditions. These documents will be available for public review after the final nationwide permits are issued.

All written correspondence in reply to this public notice should be mailed to:

U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Boulevard, Suite 210
Cheyenne, Wyoming 82009-4942

Comments on this public notice can also be submitted using electronic mail to Thomas.B.Johnson@usace.army.mil. Additional information can also be obtained by contacting Mr. Thomas Johnson in the Wyoming Regulatory Office at (307) 772-2300.

Comments are due by September 24, 2001. Comments received after the close of business on that date will not be considered.

APPENDIX A

INDEX OF NATIONWIDE PERMITS AND GENERAL CONDITIONS

I. Nationwide Permits:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Discharges
13. Bank Stabilization
14. Road Crossings*
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities*
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. *RESERVED*
27. Wetland and Riparian Restoration and Creation Activities*
28. Modifications of Existing Marinas
29. *RESERVED**
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects*
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation*
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments*
40. Agricultural Activities*
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities*
43. Stormwater Management Facilities*
44. Mining Activities

APPENDIX A (continued)

II. General Conditions:

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements*
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality*
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification*
14. Compliance Certification
15. Use of Multiple Nationwide Permits.
16. Water Supply Intakes
17. Shellfish Beds
18. Suitable Material
19. Mitigation*
20. Spawning Areas
21. Management of Water Flows*
22. Adverse Effects from Impoundments
23. Waterfowl Breeding Areas
24. Removal of Temporary Fills
25. Designated Critical Resource Waters
26. Fills Within the 100-year Floodplain*
27. Construction Period*

*** Denotes permits and conditions for which modifications are proposed**

APPENDIX B

NATIONWIDE PERMIT REGIONAL CONDITIONS IN WYOMING

1. Fens

For nationwide permits 3, 5, 20, and 32 permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activity impacting fens in Wyoming. Nationwide permits 1, 2, 4, 6-19, 21-25, 28-30, 33-36, 39-44 are revoked for use in fens in Wyoming. Wetlands commonly known as fens are defined as wetlands that are characterized by waterlogged spongy ground and contain (in all or in part) soils classified as histosols or mineral soils with a histic epipedon. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

2. Springs

All nationwide permits, with the exception of NWPs 3, 20, 31, 37, and 38, are revoked for activities located within 100 feet of the water source in natural spring areas in Wyoming. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

3. Snake River

For all nationwide permits, permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any discharge of dredged or fill material into the mainstem of the Snake River in Teton County, Wyoming.

4. Endangered Species

Permittees must notify the Corps in accordance with General Condition No. 13 prior to undertaking any activity involving the discharge of dredge or fill material on non-federal lands in the following areas for consideration of possible effects on threatened and endangered species:

- a. All streams (including intermittent and ephemeral streams) and associated wetlands between 4,000 and 7,000 feet mean sea level (msl) in Converse, Goshen, Laramie, Platte, and Niobrara Counties and in the Green River basin.
- b. Within 0.5 miles of and including the Hutton Lake and Mortenson Lake National Wildlife Refuges and all sections in Township 15 North, Range 75 West, Albany County.
- c. Wetland areas located in a floodplain below 8,100 feet msl within the North Platte River, South Platte River, and Lodgepole Creek Basins east of the crest of the Laramie Mountains in Albany, Converse, Goshen, Laramie, and Platte Counties.
- d. Areas within 1 mile of an active bald eagle nest site.
- e. Riparian wetland areas from 6,000 to 11,000 feet msl in the Medicine Bow, Sierra Madre, Wind River, Gros Ventre, Salt River, Absaroka, and Bighorn mountain ranges.
- f. All of northwestern Wyoming west of U.S. Highways 120 and 789; and north of the 9th Standard Parallel North, excluding the Wind River Indian Reservation.
- g. All areas in the Platte River and Colorado River basins when the activity would cause new water depletions or allow the continuation of historic water depletions. Water depletions include changes in timing of flows, evaporative losses, and consumptive uses. Construction and operation of projects such as reservoirs, diversion structures, water transmission pipelines, wells, and water treatment facilities usually result in water depletions.

APPENDIX B (continued)

5. Class I Waters

For nationwide permits 3, 5, 6, 12, 13, 14, 16, 18, 25, 32, 36, 39, 41, and 42 permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any discharge of dredge or fill material in Class 1 waters as defined below:

- a. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas;
- b. The mainstem of the Snake River through its entire length above the U.S. Highway 22 Bridge;
- c. The mainstem of the Green River, including Green River Lakes, from the mouth of the New Fork River upstream to the wilderness boundary;
- d. The mainstem of the Wind River from the boundary of the Wind River Indian Reservation upstream to Boysen Dam;
- e. The mainstem of the North Platte River from the Mouth of Sage Creek (approximately 15 miles below Saratoga, Wyoming) upstream to the Colorado state line;
- f. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortess Dam;
- g. The mainstem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg Bridge) upstream to Alcova Reservoir;
- h. The mainstem of Sand Creek above the U.S. Highway 14 bridge;
- i. The mainstem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
- j. The mainstem of the Tongue River, the main stem of the North Fork of the Tongue River, and the mainstem of the South Fork of the Tongue River above the U.S. Forest Service boundary;
- k. The mainstem of the Sweetwater River above the mouth of Alkali Creek;
- l. The mainstem of the Encampment River from the U.S. Forest Service boundary upstream to the Colorado state line;
- m. The mainstem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
- n. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
- o. The mainstem of Granite Creek (tributary of the Hoback River) through its entire length;
- p. Fremont Lake;
- q. All streams that are tributary to the above listed waters and are otherwise unlisted in Chapter 1, Appendix A of the Wyoming Water Quality Rules and Regulations; and
- r. Wetlands adjacent to Class 1 waters are also treated as Class 1.

6. Wind River Indian Reservation

For nationwide permits 3, 7, 12, 13, 14, 16, 17, 18, 27, 31, 33, 37, 39, 40, 41, 42, and 43, permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activity involving the discharge of dredge or fill material into waters of the United States located on the Wind River Indian Reservation.

7. Nationwide Permit 23

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activities involving the discharge of dredge or fill material into waters of the United States.

APPENDIX B (continued)

8. Nationwide Permit 27

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any wetland and riparian restoration and creation activities that involve the discharge of dredged or fill material into waters of the United States.

9. Nationwide Permit 30

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity involving the discharge of dredge or fill material into waters of the United States.

10. Nationwide Permit 39

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity involving the discharge of dredge or fill material into waters of the United States that would cause the loss of greater than 300 linear feet of any stream.

11. Nationwide Permit 40

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity identified in paragraph b. involving the discharge of dredge or fill material into waters of the United States.

12. Nationwide Permit 42

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity involving the discharge of dredge or fill material into waters of the United States that would cause the loss of greater than 300 linear feet of any stream.

13. Nationwide Permit 43

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity involving the discharge of dredge or fill material into waters of the United States.

14. Spawning Areas

General Condition No. 20 (Spawning Areas) is amended by adding the following: No discharges of dredged or fill material are allowed under any nationwide permit in spawning areas during the spawning season of aquatic life indigenous to the waterbody. Spawning seasons for the most common fish species in Wyoming are listed below:

Rainbow and Cutthroat Trout - March 15 through July 31
Brown and Brook Trout - September 15 through November 30

Site specific information on spawning seasons and spawning areas may be obtained from Fisheries Supervisors in Wyoming Game and Fish Department Regional Offices.